

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

FRANCONIA SQUARE, LLC)	
)	
	Plaintiff)
)	
v.)	
)	
)	
NOVA PETROLEUM REALTY, LLC)	
)	
	Defendant.)
)	Case Number: 1:12cv1007
)	CMH/JFA
NOVA PETROLEUM REALTY, LLC)	
)	
	Defendant/Counterclaim Plaintiff,)
)	
v.)	
)	
FRANCONIA SQUARE, LLC)	
)	
	<u>Plaintiff/Counterclaim Defendant.</u>)

**RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE
TO FILE REBUTTAL BRIEF OUT OF TIME**

On September 10, 2012, plaintiff, Franconia Square, LLC filed a motion seeking a preliminary injunction seeking to enjoin the defendant's termination of the plaintiff's franchise under the Petroleum Marketing Practices Act, Docket No. 4. More than a week later, the plaintiff filed a brief in support of its motion, Docket No. 8.

On October 1, 2012, defendant Nova Petroleum Realty, LLC ("Nova") timely filed and served its reply brief in opposition to plaintiff's motion via CM/ECF, Docket No. 15. Plaintiff now seeks leave of Court to file a rebuttal brief, more than two weeks after Nova's reply brief was served, Docket No. 18 (the "Motion").

Nova opposes plaintiff's motion for two reasons.

First, rebuttal briefs must be filed “within three (3) days after the service of the opposing party’s reply brief.” Local Rule (“L.R.”) 7 F (1). Plaintiff failed to timely file a rebuttal brief within three days after Nova served its reply brief. Plaintiff provides no specific grounds for untimely filing its brief except to state generally that “Plaintiff was out of town for the most part since the filing of the Reply Brief and was unable to prepare the Rebuttal Brief during the three day period.” Motion at ¶5.

Second, requests for extensions of time relating to motions are, in general, looked upon with disfavor in the Eastern District. L.R. 7 (I). The Motion was filed well after the expiration of the three day rebuttal brief filing deadline. Plaintiff provides no explanation why leave to file out of time was not requested earlier, prior to the expiration of the three day deadline.

Notwithstanding the foregoing, Nova will consent to the plaintiff’s Motion provided:

- (i) Plaintiff files a rebuttal brief no later than October 17, 2012, as stated in the Motion; and
- (ii) Nova is permitted to file a surreply brief in order to address what, for all intents and purposes, appears to be a new basis for the instant motion for preliminary injunction, in which event Nova will limit the length of the brief to no more than five (5) pages and will file the brief no later than October 22, 2012.

Respectfully submitted,

\John M. Luchak\
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